STATE OF NEW YORK
SUPREME COURT, COUNTY OF CLINTON

TOWN OF PLATTSBURGH,

Petitioner-Plaintiff,

v.

CITY OF PLATTSBURGH, COUNTY OF CLINTON, CLINTON COUNTY LEGISLATURE,

Respondents-Defendants.

DECISION AND ORDER

Index No. 10-1558
RJI No. 09-1-10-0627

Whiteman, Osterman & Hanna LLP, Albany (*William S. Nolan, Esq.*, of counsel), for petitioner-plaintiff.

John E. Clute, Esq., Plattsburgh, for respondent-defendant City of Plattsburgh.

O'Connell and Aronowitz, P.C., Plattsburgh (*William A. Favreau, Esq.*, of counsel), for respondents-defendants County of Clinton and Clinton County Legislature.

ROBERT J. MULLER, J.S.C.

In the early 1980s, the New York State Department of Environmental Conservation (hereinafter DEC) requested that respondent-defendant City of Plattsburgh (hereinafter the City) terminate its practice of disposing untreated sewage sludge in lagoons in the Town of Altona, Clinton County. Soon thereafter, grant funds became available through the United States Environmental Protection Agency and the DEC to design and construct sewage sludge treatment facilities, but the grant award criteria favored applications from county governments for regional facilities. As a result, respondent-defendant County of Clinton (hereinafter the County) entered into an Agreement with the City relative to "the construction, acquisition, operation and financing of a sludge/composting disposal system." The Agreement, dated September 22, 1982,

required the County to acquire the site for the system, secure the financing necessary to construct the system and, finally, to complete construction of the system. The Agreement then required the City to operate the system at its sole expense and to "pay to the County all capital costs of construction and financing of [the] system." The Agreement further provided, in pertinent part:

> "The City agrees, in the event that the system ceases operating and said system becomes inactive, to assume ownership for the fee of $1.00. The City further agrees, when the system is completely paid for, to continue operating the system or to assume ownership of the system, if this is the desire of the County. The intent of this section is to guarantee that there will be no financial burden to the Clinton County Taxpayers, forever, as a result of this system being owned by the County and operated by the City."

The County acquired property in the Town of Plattsburgh, Clinton County and the system – known as the Clinton County Compost Facility (hereinafter the Facility) – was thereafter constructed. The City began operating the Facility in 1986, accepting sludge generated by both the City and other municipalities in the County of Clinton. Operations then continued until 2005, when a portion of the Facility was destroyed by fire, thus rendering the system inoperable. Since then, the City has been disposing of untreated sewage sludge in landfills in the Town of Malone, Franklin County and Coventry, Vermont.

In the spring of 2010, the City sought to recommence operation of the Facility, proposing a different composting technique engineered to abate the noxious odors typically associated with sewage waste treatment. The City then began the permitting process and initiated the necessary review pursuant to the State Environmental Quality Review Act (*see* ECL art 8 [hereinafter SEQRA]). Additionally, the City – which had completed payment for the Facility – requested that ownership of the Facility be transferred to it by the County for a fee of $1.00, as set forth in the Agreement. In accordance with this request, defendant-respondent Clinton County

Legislature (hereinafter the County Legislature) passed Resolution No. 728 on October 13, 2010 whereby the Facility, together with the real property upon which it is situated, was transferred to the City for the sum of $1.00. Plaintiff-petitioner Town of Plattsburgh (hereinafter the Town) has now commenced this combined CPLR article 78 proceeding and action for declaratory judgment to obtain a Judgment annulling and invalidating this Resolution and, further, restraining and enjoining the County from transferring the Facility as authorized by the Resolution.

The Town first contends that Resolution No. 728 violates County Law § 215, which section provides, in pertinent part:

> "When the board of supervisors shall determine that any county real property is no longer necessary for public use such board by resolution adopted by the affirmative vote of two-thirds of the total membership of the board taken by roll call and entered in the minutes, may sell and convey all the right, title and interest of the county therein" (County Law § 215 [5]).

This section further provides that "[s]uch property may be sold or leased only to the highest responsible bidder after public advertisement" (County Law § 215 [6]). Here, the County openly admits that it failed to comply with County Law § 215. Indeed, there was no determination made relative to whether the subject real property remained necessary for public use and, further, the property was not sold to the highest bidder after public advertisement. Rather, the property was transferred to the City in accordance with the terms of the Agreement.

The County contends that County Law § 215 is not applicable under these circumstances. According to the County, the transfer is governed by General Municipal Law § 72-h, which section provides, in pertinent part:

"Notwithstanding any provision of any general, special or local law or of any

> charter, the supervisors of a county, . . . may sell, transfer or lease to or exchange with any municipal corporation or municipal corporations, . . . either without consideration or for such consideration and upon such terms and conditions as shall be approved by such officer or body, any real property owned by such county . . ." (General Municipal Law § 72-h [a]).

General Municipal Law § 72-h is applicable to all real property owned by a county, with the exception of "any real property which is made inalienable under the provisions of any general, special or local law or of any charter" (General Municipal Law § 72-h [b]). The County thus contends that, insofar as the property upon which the Facility is situated is not inalienable, transfer of such property to the City, a municipal corporation, is permissible under General Municipal Law § 72-h (*see* 1976 Ops. Atty. Gen. No. 285, at *2).

The Town, in turn, contends "that a 'prior general statute yields to a later specific or special statute'" (*Matter of Dutchess County Dept. of Social Servs. v Day*, 96 NY2d 149, 153 [2001], quoting *Erie County Water Auth. v Kramer*, 4 AD2d 545, 550 [1957], *affd* 5 NY2d 954 [1959]; *see Matter of General Elec. Capital Corp. v New York State Div. of Tax Appeals, Tax Appeals Trib.*, 301 AD2d 819, 820 [2003], *affd* 2 NY3d 249 [2004]) and, consequently, that General Municipal Law § 72-h, which was enacted in 1940, must yield to County Law § 215, a more specific statute enacted in 1950. The Court, however, is not persuaded by this argument. To the extent that County Law § 215 applies to all sales of real property belonging to a county, while General Municipal Law § 72-h applies only to those sales of real property from a county to a municipal corporation, the Court finds that General Municipal Law § 72-h is the more specific statute – not County Law § 215. Therefore, General Municipal Law § 72-h need not yield to County Law § 215.

"It has long been held that the Legislature is presumed to know what statutes are in effect

when it enacts new laws" (*Matter of Estate of Terjesen v Kiewit & Sons Co.*, 197 AD2d 163, 165 [1994]). Therefore, had the Legislature intended for County Law § 215 to override General Municipal Law § 72-h, it would presumably have so stated upon enactment of the statute in 1950. It did not, however, and in the absence of any such statement, the Court "must 'harmonize the various provisions of [these] related statutes and . . . construe them in a way that renders them internally compatible'" (*Matter of Dutchess County Dept. of Social Servs. v Day*, 96 NY2d at 153, quoting *Matter of Aaron J.*, 80 NY2d 402, 407 [1992]; *see Matter of Plato's Cave Corp. v State Liq. Auth.*, 68 NY2d 791, 793 [1986]). To that end, the Court finds that General Municipal Law § 72-h – which expressly states that it applies "[n]otwithstanding any provision of any general, special or local law" – should be applied whenever a county sells or otherwise transfers real property to a municipal corporation. County Law § 215, on the other hand, should be applied to all other sales of real property belonging to a county.

Here, insofar as the County seeks to transfer the subject real property to the City – a municipal corporation – General Municipal Law § 72-h applies and renders the transfer permissible. The Town therefore is not entitled to a Judgment annulling and invalidating Resolution No. 728 based upon the County's violation of County Law § 215.

Moving now to the Town's contention that the Agreement provides only for transfer of the Facility itself, not the real property upon which it is situated, the Court finds such contention to be without merit. When interpreting a contract, "'the objective is to determine the parties' intention as derived from the language employed in the contract,' and the words and phrases employed must be given their plain meaning" (*Cerand v Burstein*, 72 AD3d 1262, 1265 [2010], quoting *Estate of Hatch v NYCO Mins.*, 245 A.D.2d 746, 747 [1997] [citations omitted]). Here,

there is no question that the parties to the Agreement – namely, the County and the City – intended for the City to assume ownership of not only the Facility, but also the real property upon which it is situated. Indeed, both the County and the City adopt this position in their respective opposition papers. Moreover, although the Agreement does not expressly define what constitutes the "system," the language used suggests that the "system" encompasses both the Facility and the real property upon which it is situated. Indeed, the Agreement provides that, "in the event . . . the system ceases operating and . . . becomes inactive, [the City may] assume ownership for the fee of $1.00, [so as] to guarantee that there will be no financial burden to the Clinton County Taxpayers." To the extent that the County clearly wanted to avoid any financial liability, it is inconsistent with the plain language of the contract to suggest that the County should convey only the Facility and not the real property upon which it is situated. The Town's interpretation is contrary not only to the parties' reasonable expectations, but also to the language employed in the Agreement and, consequently, this Court declines to adopt it (*see Currier, McCabe & Assoc., Inc. v Maher*, 75 AD3d 889, 892 [2010]).

The Town next contends that transfer of the property is subject to SEQRA review and, insofar as the County proceeded without engaging in such a review, Resolution No. 728 must be annulled and invalidated. Before addressing this contention, however, the Court must first address the County's contention that the Town lacks standing to challenge the Resolution under SEQRA. Specifically, according to the County, while the Town may suffer an injury-in-fact as the result of operation of the Facility, no such injury will result from a transfer in ownership of the Facility.

"In land use matters . . . the plaintiff, for standing purposes, must show that it would

suffer direct harm, injury that is in some way different from that of the public at large" (*Society of Plastics Indus. v County of Suffolk*, 71 NY2d 761, 774 [1991]; *accord Matter of Save the Pine Bush, Inc. v Common Council of City of Albany*, 13 NY3d 297, 304 [2009]). Here, the Town contends that it will suffer injury because the Facility is located immediately east of a potential Environmental Justice Area,[1] which Area will be harmed by the noxious odors emitted from the Facility. The Town further contends that operation of the Facility will violate a Town law establishing a moratorium on the operation of waste sludge treatment facilities within Town limits. In support of its contentions, the Town relies largely upon *Matter of Town of Coeymans v City of Albany* (284 AD2d 830 [2001], *lv denied* 97 NY2d 602) (hereinafter *Town of Coeymans*) wherein the Town of Coeymans alleged that a resolution authorizing, *inter alia*, the acquisition of land within Town limits for the construction of a landfill would violate a local law and negatively impact public use facilities in the community. There, the Court concluded as follows:

"The alleged violations of local laws, coupled with the specific environmental

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[1] "Environmental justice efforts focus on improving the environment in communities, specifically minority and low-income communities, and addressing disproportionate adverse environmental impacts that may exist in those communities" (Department of Environmental Conservation, What is Environmental Justice?, http://www.dec.ny.gov/public/333.html [accessed Jan. 28, 2011]). As stated by the DEC, potential Environmental Justice areas

> "are 2000 U.S. Census block groups of 250 to 500 households each that, in the 2000 Census, had populations that met or exceeded at least one of the following statistical thresholds: [a]t least 51.1% of the population in an urban area reported themselves to be members of minority groups; or [a]t least 33.8% of the population in a rural area reported themselves to be members of minority groups; or [a]t least 23.59% of the population in an urban or rural area had household incomes below the federal poverty level" (Department of Environmental Conservation, County Maps Showing Potential Environmental Justice Areas, http://www.dec.ny.gov/public/899.html [accessed Jan. 28, 2011]).

> concerns set forth in the pleadings, are sufficient to confer standing upon the Town because these alleged adverse effects are peculiar to the Town's role as a municipal agency and, therefore, 'the harm [to the Town] is different from that of the public at large,' i.e., an individual resident of the Town" (*id.* at 833, quoting *Matter of Parisella v Town of Fishkill*, 209 AD2d 850, 851 [1994]).

While the Court concurs with this result, it declines to reach the same conclusion here, as the facts presently before the Court are readily distinguishable from those before the Court in *Town of Coeymans*. In that case, the Town of Coeymans amply demonstrated that it would suffer direct harm, as the land was being acquired for the purpose of constructing and operating a landfill. In other words, operation of the landfill was contingent upon acquisition of the land. Here, however, there is nothing in the record to suggest that operation of the Facility is contingent upon ownership being transferred from the County to the City. Rather, the City has already applied to the DEC for modification of its existing permits and initiated the necessary review process pursuant to SEQRA.[2] The County, in turn, has fully recognized that the City is responsible for operation of the Facility under the Agreement and has no plans to interfere with the City's resumption of operations, notwithstanding whether ownership is transferred. Indeed, the principal reason why the County resolved to transfer ownership of the Facility to the City on October 13, 2010 was to avoid any further involvement in the issues that gave rise to this litigation. For example, during the October 13, 2010 session – the minutes of which are contained within the Record – one Legislator stated as follows: "The City paid for this, the

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[2] On October 18, 2010, the DEC designated the City Council of the City of Plattsburgh as lead agency for this SEQRA review. This designation came after the Town Board for the Town of Plattsburgh and the Planning Board for the Town of Plattsburgh challenged the City Council for designation as lead agency. The DEC ultimately found that "the City Council has broader governmental powers for investigation of the impacts of the proposed modifications to the waste sludge treatment facility . . . ." It did, however, encourage the City Council to "solicit analyses and comments from the Town Board and Planning Board."

County was placed on it because that was the only way the City was able to get the grant. [T]he County is not involved in the lawsuits. [T]his should have been transferred to the City years ago." Another Legislator concurred, stating that "the County should turn this over to the City as the County has only served as paper agent so the City could get the grant." Even those Legislators that opposed a transfer of ownership merely did so because they felt the timing was wrong. One Legislator stated that

> "there seems to be no urgency in the County doing this. Had this issue come up a year or two before and the City had asked this be transferred, it would have gone through. However, because there is this particular issue going on now, it does interject the County. [T]here is no urgency to adopt this resolution this evening."

It has not been suggested or even intimated that failure to adopt the Resolution would in any way impact the City's resumption of operations at the Facility. The Court therefore finds that the Town has failed to demonstrate any injury-in-fact as a result of the County's transfer of ownership of the Facility to the City. All of the injuries enumerated above will arise from operation of the Facility, which will resume regardless of the transfer in ownership.[3]

Insofar as the Town contends that it will suffer injury as a result of the transfer of ownership because it "has identified the [real property upon which the Facility is located] as a target for significant future growth in the Town," the Court finds such contention to be without merit. According to the Town, "[t]he parcel is a prime location for retail, business and commercial purposes [and t]hese potential future uses will be precluded by the conveyance of the County parcel." Although this might be true, the Town ignores the very salient fact that, even if

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[3] The Court notes that the Town's grievances are perhaps more appropriately aired in the context of the SEQRA review now underway relative to the resumption of operations at the Facility.

the subject property is not transferred to the City, it is still owned by the County and unavailable for commercial development. The Court therefore finds this alleged injury to be too speculative (*see Matter of Widewaters Rte. 11 Potsdam Co., LLC v Town of Potsdam*, 51 AD2d 1292, 1295 [2008]).

To the extent that the Town has failed to demonstrate that it will suffer an injury as a result of the passage of Resolution No. 728, the Court finds that it lacks standing to challenge such Resolution under SEQRA (*see Matter of Port of Oswego Auth. v Grannis*, 70 AD3d 1101, 1104 [2010], *lv denied* 14 NY3d 714 [2010]). In view of the foregoing, the Court need not address the Town's remaining contentions pursuant to SEQRA.

Having found that petitioner is not entitled to a Judgment annulling and invalidating Resolution No. 728, the verified petition and complaint must be dismissed.

Therefore, having considered the Petition and Complaint, verified on October 18, 2010; Affidavit of William S. Nolan, Esq. with exhibit attached thereto, sworn to on October 18, 2010, submitted in support of the Petition; Affidavit of Bernard C. Bassett, sworn to on October 15, 2010, submitted in support of the Petition; Answer of respondents-defendants County of Clinton and Clinton County Legislature, verified on November 4, 2010; Affirmation of William A. Favreau, Esq. with exhibits attached thereto, dated November 4, 2010, submitted in opposition to the Petition; Record, certified by William A. Favreau, Esq. on November 4, 2010; Reply to Petition of respondent-defendant City of Plattsburgh, verified on November 3, 2010; Affidavit of Jonathan Ruff with exhibits attached thereto, sworn to on November 2, 2010, submitted in opposition to the Petition; Affidavit of Donald M. Kasprzak with exhibits attached thereto, sworn to on November 3, 2010, submitted in opposition to the Petition; Reply Affidavit of William S.

Nolan, Esq. with exhibit attached thereto, sworn to on November 8, 2010, submitted in further support of the Petition; Affidavit of Sandra M. Latourelle, sworn to on November 16, 2010, submitted in further support of the Petition; Affidavit of Bernard C. Bassett with exhibits attached thereto, sworn to on November 17, 2010, submitted in further support of the Petition; Reply Memorandum of Law of William S. Nolan, Esq. and Todd M. Mathes, Esq., dated November 18, 2010, submitted in further support of the Petition; correspondence of John E. Clute, Esq. with exhibits attached thereto, dated December 2, 2010; submitted in opposition to the Petition; correspondence of William A. Favreau, Esq., dated December 3, 2010, submitted in opposition to the Petition; and correspondence of William S. Nolan, Esq. dated December 7, 2010, submitted in further support of the Petition, it is hereby

ORDERED AND ADJUDGED that the verified petition and complaint is dismissed in its entirety.

The original of this Decision and Order is returned to counsel for respondents-defendants County of Clinton and Clinton County Legislature for filing and service with notice of entry. The Order to Show Cause dated October 18, 2010 has been filed by the Court together with the above-referenced submissions.

Dated: February 3, 2011, at
Lake George, New York

ROBERT J. MULLER, J.S.C.

ENTER: